

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL TEZAK,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a  
Delaware corporation,

Defendant.

CASE NO. C09-5212BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTION FOR PROTECTIVE  
ORDER

This matter comes before the Court on Plaintiff Michael Tezak's ("Tezak") motion for protective order (Dkt. 14). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants in part and denies in part the motion for the reasons stated herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This matter arises out of a personal injury claim by Tezak against Defendant BNSF Railway Company ("BNSF"). Dkt. 1 (Complaint). Tezak alleges that, over the course of his career at BNSF, he has suffered injuries to his shoulder that have caused him pain and loss of sleep. *See* Complaint ¶ 8; *see also* Declaration of Debra Dickerson (Dkt. 17-2), Ex. 1 at 1 (noting Tezak's loss of sleep due to shoulder pain). Tezak, during relevant times, also saw Susan Fenner, MA, LMHC (mental health counselor). BNSF seeks to obtain the relevant records from Ms. Fenner. *See, e.g.*, Dkt. 16 (BNSF's response to the instant motion to protect the disclosure of such records).

1 On June 3, 2010, Tezak moved the Court for a protective order to prevent the  
2 release of his mental health records because, he contends, his mental health is not at issue  
3 in this case. *See, e.g.*, Dkt. 14. On June 9, 2010, BNSF responded. Dkt. 16. On June 10,  
4 2010, Tezak replied.

## 5 II. DISCUSSION

6 The parties agree that Tezak's mental health has not been put at issue as of this  
7 point in litigation. *See, e.g.*, Dkt. 18 at 1. However, BNSF is seeking any records that  
8 relate to Tezak's shoulder pain and loss of sleep. Dkt. 16. BNSF contends that Ms. Fenner  
9 may have records that would show that she treated Tezak in some manner for loss of  
10 sleep. In other words, BNSF appears to be attempting to show that Tezak's claimed loss  
11 of sleep may not have been related, entirely or at all, to his shoulder injury.

12 Ms. Fenner submitted a letter regarding her lack of records for treating Tezak for  
13 loss of sleep or shoulder pain. Declaration of James K. Vucinovich, Attachment 1 (Dkt.  
14 24-2, sealed) at 1. This sealed letter reveals, however, that Ms. Fenner may have some  
15 records regarding Tezak's loss of sleep during the relevant period of his underlying  
16 claims. Such records may be relevant to BNSF's apparent theory. Relevancy is  
17 "construed broadly to encompass any matter that bears on, or that reasonably could lead  
18 to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer*  
19 *Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

20 Therefore, the Court denies Tezak's motion for a complete protective order. To the  
21 extent available, the Court orders Tezak to produce to BNSF Ms. Fenner's records  
22 relevant to his loss of sleep or shoulder injuries, as requested by BNSF. These records  
23 shall be filed pursuant to a protective order agreed to by the parties and filed on the  
24 Court's docket under seal unless and until it is otherwise shown that the records should be  
25 made public.  
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1 This order does not decide whether any such records will be deemed admissible  
2 for trial. Further, this order leaves open the option for Tezak to withdraw his allegations  
3 related to sleep issues, which would likely make Ms. Fenner's records irrelevant to the  
4 underlying issues in this matter. *See* Dkt. 16 (BNSF offered this compromise to Tezak).

5 **III. ORDER**

6 Therefore, it is hereby

7 **ORDERED** that Tezak's motion for protective order (Dkt. 14) is granted in part  
8 and denied in part as discussed herein. Tezak is **ORDERED** to produce the relevant  
9 documents within 10 days of this order.

10 DATED this 29th day of June, 2010.

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13 BENJAMIN H. SETTLE  
14 United States District Judge  
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